

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on February 19, 1999 at 3:15 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 492, 2/19/1999; SB 499,
2/19/1999
Executive Action: SB 313; SB 411; SB 462; SB465;
SB 492; SB 499; SB 344; SB 345

HEARING ON SB 492

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents:

Anne Hedges, Montana Environmental Information Center
Tom Gilbare, Montana Association of Oil, Gas & Coal Counties
Bill Snoddy, McDonald Gold Project
Frank Crowley, ASARCO
Jill Andrews, Montana Mining Association
Don Allen, Western Environmental Trade Association
Russ Ritter, Montana Resources
Tom Patten, Montana Groundwater Assessment Act

Opponents: None

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, presented **SB 492** which orients the **RIT** back toward reclamation and remediation. There have been previous discussions regarding the **RIT** monies being used for a variety of purposes other than what the tax was originally intended. The legislature in the past twelve years or so has used money from that tax to fund general government.

This bill also works together with **SB 49** and **SB 249**. Most of state government funding came out of the **RIT** through **SB 49** but it did not quite get it all out. This bill tries to remove it but not at the expense of the Groundwater Assessment Program, Orphan Share Account, Reclamation and Development Grant program, etc. The contingent language says if those programs are not funded in **HB 2** from the General Fund then part of this bill is void so those programs can go on funding about \$925,000 of state government.

This bill, if passed, will finally get the **RIT** back to funding what it was originally meant to fund. He urged the committee's approval.

Proponents' Testimony:

Anne Hedges, Montana Environmental Information Center, stated she loved the bill because it finally puts the **RIT** money where it belongs which is on the ground, in clean up, and getting the job done. They strongly support the provision for the Orphan Share account. They also support Section 10 - Eligibility Requirements, which even if **SEN. KEATING'S** bill does go through, will remain in effect. It puts more of the money where they think it should be, i.e. cleaning up mineral development sites. The urge a DO PASS.

Tom Gilbare, Montana Association of Oil, Gas & Coal Counties, stated the counties, last fall, unanimously decided to support any kind of legislation that would put the **RIT** money back to the original purpose for which it was intended, focusing on reclamation. The 33 counties he represents strongly urge the committee's support on the bill.

Bill Snoddy, McDonald Gold Project, stated 100 years ago mining in Montana did not have the technology that is commonly used today to reclaim mines. There are 3,834 abandoned mines in Montana with a good portion of them needing reclamation. He gave information to the committee on the 278 abandoned mines in the state which **DEQ** feels qualify for abandoned mine clean up action **EXHIBIT (nas41a01)**. The average project now costs about \$300,000 to undertake. Some go as high as \$1 million. The **RIT** money is set aside to reclaim these historic mines and he encourages a DO PASS.

Frank Crowley, ASARCO, stated he appreciates the hard work of **SEN. GROSFIELD** and **SEN. KEATING** in being tenacious in trying to render these funds back to a more appropriate destination for which they were entitled. These funds have been bled away from the purpose for which they were intended. He encourages a DO PASS recommendation.

Jill Andrews, Montana Mining Association, spoke in support of the bill. They supported **SB 249** and hoped the committee will give a DO PASS recommendation.

Don Allen, Western Environmental Trade Association, spoke in support of the bill. He felt **Mr. Crowley** certainly stated well the need to get the right focus on where the money needs to be spent.

Russ Ritter, Montana Resources, spoke in support of the bill. They have always felt the **RIT** money needs to be spent on many of the items **SEN. GROSFIELD** articulated. They encouraged a DO PASS.

Tom Patten, Montana Groundwater Assessment Act, said they support the concept of the bill from their support of the Groundwater Assessment Program. Section 12 contingent voidance does do the job.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 18.3; Comments : None.}

Questions from Committee Members and Responses:

SENATOR COCCHIARELLA is curious what money is being taken away from, that could be significant in this arena when the \$925,000 is transferred from the General Fund? **SEN. GROSFIELD** stated almost \$500,000 from DNRC Conservation and Resource Development Division and some permitting and interest money from Water Resources to **DEQ** enforcement. **SEN. COCCHIARELLA** questioned those monies would be gone and not spent there anymore? **SEN. GROSFIELD** stated that was right except on page 11, lines 10, 11 and 12. If those programs can be funded out of **HB 2**, then next legislative session the authority to spend them out of **RIT** is gone. They will be funded out of the General Fund. If they are not funded out of **HB 2**, they will be funded out of **RIT** until a future session when an alternate funding source is identified.

SENATOR TAYLOR wondered if this was going to be put down in a black hole or not. **SEN. GROSFIELD** stated he would rather not put this bill in a black hole and he would rather just work through the process as we go along on **HB 2**. This does depend on **SEN. KEATING'S** bill but this is following it by a week or two. **SEN. TAYLOR** asked if this would become a cat and dog or is there a possibility it will be funded? **SEN. GROSFIELD** stated in that sense it was probably a cat and dog in essence. If it does not get funded, then it only affects Section 4 of the bill. The remainder of the bill still works.

SEN. COLE asked if there would still be \$600,000 going into the Groundwater Assessment account? **SEN. GROSFIELD** stated this bill only deals with tax proceeds. It does not deal with interest except for one mention to be consistent with **SB 49**. **Senate Bill 49** says there is \$300,000 of interest income which goes to Groundwater Assessment and \$300,000 of taxes. This bill says \$666,000 total and is an increase of \$66,000 over **SB 49**. That is the difference. **SEN. COLE** questioned if this bill is under the assumption the **RIT** tax will be continued? **SEN. GROSFIELD** stated page 11, line 16 & 17, says if **SB 249** does not pass, this whole bill goes on, if **SB 249** does pass then Section 1-9 of this act are void and the only thing left is Section 10 and 11 with direction for the grant program to prioritize funding for reclamation projects.

SENATOR MCCARTHY questioned page 5, line 30, talking about the metal mines tax reserve fund in relation to school districts. How will this affect money going to school districts? **John Tubbs, DNRC**, said Section 6 is a technical section which does nothing to school funding and will stay the same. When the statute is amended (f) turns into (e), it is just tracking that

change. It has no effect on funding. **SEN. McCARTHY** said there will be no change in the money that is currently going into the school funding account? **Mr. Tubbs** said that was correct.

Closing by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, stated trying to get agencies out of **RIT** and getting back to using that money for the purpose for which it was intended has been talked about for years. For years they have also talked about the concept of **SEN. KEATING'S** bill about should the tax be sunset or not. Any agency that has been funded using **RIT** has probably been thinking ahead and realizing that bill could well pass one session or another and they have been thinking about ways to get out of the **RIT**. This is the way. The question **SEN. TAYLOR** raises about if there will be \$925,000 in **HB 2**? He is not certain but is going to try. He thinks it is time to do this and he urges the committee's approval.

{Tape : 1; Side : A; Approx. Time Counter : 18.3 - 27.3; Comments : None.}

HEARING ON SB 499

Sponsor: **SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER**

Proponents:

Mark Simonich, Director, Department of Environmental Quality
Steve Pilcher, Atlantic Richfield Company and City of Billings
Don Allen, Western Environmental Trade Association
Frank Crowley, ASARCO
John Bloomquist, Montana Stockgrowers Association
Cary Hegreberg, Montana Wood Products Association
Gail Abercrombie, Executive Director, Montana Petroleum Association

Opponents:

Jeff Barber, Montana Environmental Information Center

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, presented **SB 499.**

On Christmas Eve the Governor received a letter from the **Environmental Protection Agency** which stated comments on a number of changes made regarding our water quality standards and laws of the last number of years. Some comments dealt with statutory changes and some with rule changes. **EPA** said they were going to disapprove some of what has happened over the last number of years. Interestingly, **EPA** said, "the region especially wants to commend the state for developing nondegradation implementation procedures in the absence of detailed **EPA** requirements or national implementation guidelines and at a time when a majority of states lack this type of implementation methodology." In other words, they were acknowledging and appreciating that Montana has been a leader in this area as is the case in many areas. However, they went on to say they disapproved some areas of the changes we have made.

In early January, the Governor sent a letter back to **EPA** saying Montana would look at these suggested changes but also that Montana was concerned at the way this whole thing happened. He said, "I must also reluctantly add that I am greatly concerned with the manner in which **EPA** has acted in this matter. **EPA** has been fully aware of these particular statutes for many years and, in fact, often had representatives in the committee rooms when the various pieces of legislation were being considered. Throughout the process it has always been difficult to get **EPA** to indicate, up front, whether a particular legislative action was going to be acceptable. Now after the laws have been in place and in force for sometime, **EPA** has issued a decision of disapproval for some of the statutes. Most of the statutes subject to your recent disapproval action have been pending since August, 1994. Since that time agencies have issued permits, approved other types of action and even take enforcement actions in compliance with these very standards. Now at the beginning of the session **EPA** is demanding immediate change and we will have 90 days to favorably respond. In all fairness, **EPA** should have been discussing its concerns with the Department well in advance of the current legislative session." **EPA** wrote back and said his points were well taken.

This bill responds to the **EPA** letters of December 24 and January 26. It includes some statutory changes to clarify some of the items discussed in order to bring our water quality acts and rules into compliance. It does not address all the concerns.

Proponents' Testimony:

Mark Simonich, Director, Department of Environmental Quality, spoke in support of **SB 499** as per **EXHIBIT(nas41a02)**.

{Tape : 1; Side : A; Approx. Time Counter : 27.3 - 44; Comments : None.}

Steve Pilcher, Atlantic Richfield Company and City of Billings, spoke hesitantly in support of **SB 499**. The recommendations, as proposed in this bill, are probably a reasonable compromise. He is willing to support it because it basically says those activities that require a permit are not statutorily exempt from the review process.

Don Allen, Western Environmental Trade Association, spoke in support of the bill. They support the approach the Department is taking in dealing with the other disapproved issues in those letters. They think this bill does a good job of pulling out those things that really need to be addressed statutorily. They think some of the other things can and should be worked out as the Department is planning.

He was concerned about **EPA's** letter demanding the legislature had to do something in 90 days. **WETA** does feel this is a good solution and support the Department in their approaches.

Frank Crowley, ASARCO, spoke in support of the bill. He finds it ironic **EPA** is taking Montana under a microscope. It is ironic that one of the few states that has tried to wrestle with this very difficult issue is now having its program hyper criticized like this. Some media and press have said Montana has a weak water quality program. Montana has a very stringent water quality program. He urged a DO PASS on this bill.

John Bloomquist, Montana Stockgrowers Association, stated nondegradaton exemptions are really the lynchpin of a workable nondeg policy. He echos **Mr. Crowley's** comments that a state that has stepped out and wrestled with nondegradation in how to make it a workable policy, was criticized by **EPA**. The changes in this bill are tweaks to satisfy the concerns of **EPA**. He is disappointed **EPA** waited until the week before the session was going to start to take the action they did.

He wants to applaud the state for the position they have taken regarding **EPA's** disapproval of 75-5-308. It is hard to imagine that short term authorizations cannot be a part of any state's water quality policy.

He also applauds the state on the position they have taken regarding the 310 permit process. This is probably one of the most environmentally beneficial programs for reviewing riparian management and stream restoration projects. Naturally some sediment will be stirred up with some short term accedences of water quality standards. He urged a DO PASS recommendation.

Cary Hegreberg, Montana Wood Products Association, spoke in support of this bill and thanked **DEQ** and **SEN. GROSFIELD** for bringing this credible response to **EPA's** concerns to the legislature. He also thanked **DEQ** legal staff for the excellent job they are doing in tending the state's interest in the litigation which is pending before District Court which relates to this issue. They think the Department has done a good job of bringing this issue before the legislature where it needs to be resolved without caving in to some of the irresponsible kinds of concerns **EPA** has brought forward.

Gail Abercrombie, Executive Director, Montana Petroleum Association, specifically addressed the accommodation for the **EPA's** disapproval on the oil and gas drilling on page 6, line 15 of this bill. When these exemptions were brought forward to be put into statute it was to avoid double permitting. The Board of Oil and Gas, in their drilling permits and restoration, do not allow any discharges to surface water. Therefore, the addition of the words "that do not result in discharges to surface water" is actually the current practice in place with Oil and Gas. They support the bill.

Opponents' Testimony:

Jeff Barber, Montana Environmental Information Center, stated their objection is not the bill itself but it fails to address a number of other issues that **Mr. Simonich** brought up that were disapproved by **EPA** in the blizzard of letters that has flown around over the past couple of months. They have problems with the sections dealing with categorical exclusions. On page 2, line 13, it basically says the Board of Environmental Review can set the criteria for what is nonsignificant and that is what **EPA** objected to. They did not like that it was put in statute and thought the Board should go through a process to determine what is significant and what is not. They believe that would be a more appropriate way to address what **EPA** said in its letter to eventually start the process of deleting categorical exclusions through the Board.

This bill is a missed opportunity to address a number of other things **EPA** disapproved. They were not too happy about the timing of **EPA's** letter either.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 20.2; Comments : None.}

Questions from Committee Members and Responses:

SENATOR COLE questioned if the items disapproved by **EPA**, which are not underlined, are going to be dealt with later? **Mr. Simonich** stated they are working with **EPA** to see if they can find a reasonable solution to those. They are in basic disagreement on a number of them. Ultimately, they may suggest some language for approval but, at this point in time, this is as far as they could get as they recognized they needed to have a bill moving.

Special Guest:

John Wardell, Director of EPA in Helena, did not have prepared comment. He had some disagreements from the perception offered that **EPA** has somewhat blind sided the state and this is an eleventh hour surprise. These discussions go back many, many months. Nevertheless, what he has offered on behalf of **EPA** is to work with the state to come up with language where there is presently disagreement. Clearly, there is ongoing litigation and whether this bill will help satisfy and settle that he did not know. He offered to answer questions but due to litigation and some of the other issues he preferred to keep them to a minimum.

Closing by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER, stated he appreciated the agency's approach as well to short term authorizations and 310 permits, etc. Before he got into the Senate he spent about twelve years as a Conservation District Supervisor and he remembers dealing with a number of 310 permits. Through chairing the Water Resource Committee and eventually becoming President of Montana Association of Conservation Districts, he became familiar with how the 310 process works around the state. In the mid-80's they addressed the short term authorizations or 3A permit. They tried to figure out how to put a 3A permit on the back of the 310 permit so there would not have to separate inspections and separate people coming out, etc. Fish, Wildlife & Parks biologists were given authority to sign off on 3A authorizations for short term accedences of water quality standards. This is a state professional fisheries biologist doing that and they have received training for it. They do not have to sign that permit, but in order for the permittee to get the 310 permit, they have to deal with the 3A question. There are plenty of safeguards in place already. Another side benefit to the program is there has been 20-25 years of education of water quality concepts to people that live in the

country. Education regarding how should we act with our irrigation structures, are there better ways to do it and more environmentally sound methods to do it. He appreciates the Department for standing their ground on this issue because it has been a very effective program.

This legislation does provide for an appropriate answer to the **EPA** letters. He is pleased **Mr. Wardell** is here.

He pointed out there is a lot of good news in these letters and if there has been some apprehension about whether or not **EPA** is going to disapprove this or that, we now have it on record that **EPA** approves most of what we have done with the exception of some narrow areas most of which are addressed in this bill. If everyone continues to work together on these issues, hopefully we will end the session with a good resolution on this issue.

{Tape : 1; Side : B; Approx. Time Counter : 20.2 - 34.8; Comments : None.}

EXECUTIVE ACTION ON SB 313

Motion/Vote: SEN. MAHLUM moved that SB 313 BE TABLED. Motion carried 9-2 with SEN. MILLER AND SEN. COCCHIARELLA voting no.

EXECUTIVE ACTION ON SB 411

Motion: SEN. COLE moved that SB 411 DO PASS.

Motion/Vote: SEN. COLE moved that SB 344 AMENDMENTS SB041101.ALM DO PASS. Motion carried 11-0. **EXHIBIT**(nas41a03)

Motion/Vote: SEN. GROSFIELD moved that SB 411 DO PASS AS AMENDED. Motion carried 11-0.

{Tape : 1; Side : B; Approx. Time Counter : 34.8 - 44; Comments : None.}

EXECUTIVE ACTION ON SB 462

Motion: SEN. GROSFIELD moved that SB 462 DO PASS.

Motion: SEN. GROSFIELD moved that SB 462 AMENDMENTS SB046201.ALM DO PASS. **EXHIBIT**(nas41a04)

Vote: Motion carried 11-0.

Motion: SEN. GROSFIELD moved that SB 462 AMENDMENTS SB046202.ALM DO PASS. **EXHIBIT**(nas41a05)

Vote: Motion carried 11-0.

Motion/Vote: SEN. GROSFIELD moved that SB 462 DO PASS AS AMENDED. Motion carried 10-1 with SEN. WILSON voting no.

EXECUTIVE ACTION ON SB 465

Motion/Vote: SEN. MILLER moved that SB 465 BE TABLED. Motion carried 10-1 with SEN. COCCHIARELLA voting no.

EXECUTIVE ACTION ON SB 492

Motion/Vote: SEN. GROSFIELD moved that SB 492 DO PASS. Motion carried 11-0.

EXECUTIVE ACTION ON SB 499

Motion: SEN. GROSFIELD moved that SB 499 DO PASS.

Motion: SEN. GROSFIELD moved to amend SB 499 PAGE 2, LINE 18 BY STRIKING "IDENTIFIABLE".

Vote: Motion carried 11-0.

Motion: SEN. MAHLUM moved that SB 499 DO PASS AS AMENDED.

Discussion:

SENATOR COCCHIARELLA stated EQC had considered an emergency meeting to respond to the letter from EPA and further questioned if we were not to pass this bill what else is out there to respond and fix the problem in dealing with EPA's letter? SEN. GROSFIELD stated there was not other legislation in the works to deal with this. Some of the issues could be dealt with in terms of rule but some do need statutory tweaking.

Vote: Motion carried 9-1 with SEN. WILSON voting no.

EXECUTIVE ACTION ON SB 344

Motion: SEN. MILLER moved SB 344 BE RECONSIDERED FOR PURPOSES OF AMENDMENT.

Motion/Vote: SEN. TAYLOR moved ADJOURN MEETING. Motion failed 4-7.

Vote: Motion SB 344 BE RECONSIDERED FOR PURPOSES OF AMENDMENT carried 6-5 by Roll Call Vote with SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON voting no.

Motion: SEN. MILLER moved that SB 344 AMENDMENT SB034401.ALM DO PASS. **EXHIBIT**(nas41a06)

Discussion:

SENATOR TAYLOR stated he commended **SEN. MILLER** for trying. He was not personally against mining. There are some very good mining companies and they should be taken care of. This is a bad move because it takes the people out of the process - the people that vote for the legislators. If **CI-75** is overturned by the Courts next week, should this be put on the ballot again or should the people go out and get the signatures? The mining industry has the ability to go out and get their own signatures and create their preferences. He feels it is bad policy to use legislators as that instrument because the people are going to lose confidence in the logic of Helena.

SENATOR KEATING stated this bill does send it out for a vote of the people. It is a referendum and the people will get to vote on it. However, this time they will hear both sides of the story and they might be better informed in making a decision. They could sustain **I-137** and if they do, after having all the information, so be it. He feels they should have the opportunity to hear both sides.

SENATOR MILLER stated contraire to **SEN. TAYLOR**, this bill is exactly the opposite. The purpose of the amendment is to put it to the vote of the people. Let the people make the decision if they indeed want to eliminate mining of this type in Montana.

SENATOR WILSON feels we are being quick triggered and arrogant to step in front of the people and decide this issue among politicians instead of the people. There is nothing wrong with what we are doing but he feels the mood of the folks out there will turn even worse toward this assembly if we go down this road. He strongly resists this amendment.

SENATOR GROSFIELD stated he appreciated **SEN. MILLER** bringing this issue back. He has grave concerns about the lack of adequate information in the campaign and the inappropriateness of sound byte policy making. Article 3, Section 5 of the Constitution deals with referendums. That portion of the Constitution talks about the people being able to take an act that the legislature has passed and refer it. There is a mechanism in place for them to suspend an act the legislature passes which is entirely Constitutional and similar to what we are doing here. It will be in place for a couple of years and then discussed and voted on. He feels what the Committee is doing is entirely responsible by saying we will go out and discuss this issue in the full light of day without **I-125** limiting anyone's participation. The votes on these bills are tough votes for all the committee members but he stands on the side of informed, responsible, thoughtful public policy making.

SENATOR COLE feels this amendment is fair and equitable and is going to allow the opportunity to really take a look at what **I-137** is about. He feels there was a one-sidedness before. It will still be two years down the road before the vote is taken.

SENATOR KEATING stated people referring a statute not passed by the legislature did occur on the income tax increase three sessions ago. The people objected to the passage of that law by the legislature, they got it on a referendum, put it on the ballot and killed it so it works both ways. Most of the legislators feel that people did not have the information they should have had in order to make their decision the last time around.

SENATOR WILSON stated this was an 11th hour, last ditch effort because all else failed. For us to characterize it as anything else is not right. This is a last ditch effort to make what we are doing here sound the best. What was proposed in these bills initially did not look good. He thinks most of us know it and this is a quick little way to slip it by the public and make it look good.

SENATOR CRISMORE stated **SEN. WILSON** may be right but he does not think it was the first time nor the last time that all the efforts are not used for trying to pass some legislation.

SENATOR GROSFIELD stated nothing was being slipped by the public. The public is in the room and newspaper reporters in the room. This issue is going to be like any other issue that goes through the legislature with lobbying for and against. If it passes it will go through another House with more hearings. There is nothing hidden about what is being done here. It is right out in the full light of day where it should be.

Vote: Motion that **SB 344 AMENDMENT SB034401.ALM DO PASS** carried 6-5 by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

Motion/Vote: **SEN. MILLER** moved that **SB 344 DO PASS AS AMENDED**. Motion carried 6-5 by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

EXECUTIVE ACTION ON SB 345

Motion/Vote: **SEN. KEATING** moved **SB 345 BE RECONSIDERED**. Motion carried 6-5 by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

Discussion:

SENATOR GROSFIELD stated the bill, as it came off the table, had some amendments and he believed the amendments stayed with it. They were pointed to the **I-137** and Golden Sunlight issue. A glitch in the previous amendment had been pointed out to him and he wanted to strip the old amendments and replace them with new to correct a technical error. The new amendments would still protect Golden Sunlight.

Motion/Vote: **SEN. GROSFIELD** moved **TO STRIP AMENDMENTS SB034501.ALM** from **SB 345**. Motion carried 11-0.

Motion: **SEN. GROSFIELD** moved that **SB 345 DO PASS**.

Motion: **SEN. GROSFIELD** moved **SB 345 AMENDMENTS SB034501.ALM WITH TWO AMENDMENTS DO PASS**. **EXHIBIT(nas41a07)**.

Discussion:

SENATOR GROSFIELD stated these amendments exempt Golden Sunlight from **I-137** and any amended permit that expands the mine operation for the life of the mine. Golden Sunlight is out as well as any other mine that was operating on November 3, 1998, re: Line 24.

Vote: Motion that **AMENDMENTS SB034501.ALM WITH TWO AMENDMENTS DO PASS** carried 9-2 with **SEN. TAYLOR AND SEN. WILSON** voting no.

Motion: **SEN. COLE** moved that **SB 345 AMENDMENTS SB034505.ALM DO PASS**. **EXHIBIT(nas41a08)**

Discussion:

SENATOR MILLER stated part of the amendments in the title and #3 are identical and are not needed.

SENATOR GROSFIELD stated the committee should give **Larry Mitchell** leeway to coordinate the two amendments.

Vote: Motion that **SB 345 AMENDMENTS SB034505.ALM DO PASS** carried 6-5 by Roll Call Vote with **SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON** voting no.

Discussion:

SENATOR MILLER stated he was going to vote for this bill not because he liked the main bill but because he liked the amendments. The bill sponsors said they never intended for the mines under operation to be affected. These amendments would allow those to continue and would only stop operations in the future. He still does not like the policy of county to county regulation on pollution issues and he intends to work, as this goes through, to either find another place for these amendments to go or do something county by county. He intends to vote for it today and put it out on the floor and see where it goes from there.

SENATOR WILSON opposes the bill. The bottom line is you cannot tell a watershed to respect a county line. He questions again where the local option policy ends. This is terrible public policy and he hopes this bill does not make it completely through the process.

SENATOR CRISMORE stated they are trying to get a mine in operation in his area on the Clark Fork. It is very close to the Idaho line and he does not feel Idaho should be able to tell us we can't mine in Montana because they think the water does run through Idaho too.

SENATOR MILLER questioned the issue of the vote of the people by the county. He does not find in statute where it would be required to end up in a vote of the people. It can go to a vote of the people but does not require it, is that right? **Larry Mitchell** stated the County Commissioners can adopt this by ordinance with 2 out of 3 votes. However, the procedure for adopting the ordinance is subject to repeal of the vote of the people or the commissioners may refer it to a vote of the people but they are not required to. The people can require that it be put on the ballot and then can repeal and amend it. **SEN. MILLER** said he was not sure it was clear at the hearing that the vote of

the people would have to come then by doing an initiative to repeal the actions of the commissioners. He does not like the verbiage in that section but he is not going to withhold his vote because of it.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 44; Comments : None.}

SENATOR TAYLOR stated his concern with this bill was that two people could decide and then the people have to go out and get a referendum to overturn those two people. We are setting it up so a few are going to decide what many disagree with.

SENATOR ROUSH stated when the vote is cast, this committee must consider the future of this piece of legislation in the State of Montana. On a local option basis, what is the liability for development in one county when they use cyanide or something worse than cyanide to operate with and what is the liability to the next county for pollution?

SENATOR GROSFIELD stated he did not agree with that at all. This bill allows the county to vote on whether or not they want a particular project in their area, they are not voting on whether or not to nullify the Title 75 Water Quality Act, Title 62 Mining Act or air quality or water quality laws. All those laws are still in place. This bill does not nullify environmental requirements.

SENATOR McCARTHY stated she lives in the affected area and feels her people are more conscious about how to do a cleanup and how the technology has improved in the last 100 years. They are working desperately to make sure no other area is damaged like what is now being cleaned up. She thinks it is very important that if those people living there voted they would want to go forward can.

SENATOR TAYLOR suggested a conceptual amendment to address **SEN. MILLER'S** concerns stating it would take 2/3 vote of the electors voting on the proposal to enact an ordinance. He is very concerned that two county commissioners out of three could put this on and the people have to go out and create a referendum to get the vote overturned.

SENATOR COLE stated he was hesitant to have an amendment due to insufficient time to study it.

SENATOR GROSFIELD stated if **SENATOR TAYLOR** wanted to make an amendment he could.

Motion/Vote: SEN. TAYLOR moved that SB 345 CONCEPTUAL AMENDMENT FOR 2/3 VOTE OF ELECTORATE TO ENACT ORDINANCE DO PASS. Motion carried 6-5 by Roll Call Vote with SENATORS CRISMORE, COLE, GROSFIELD, KEATING AND MCCARTHY voting no.

Discussion:

SENATOR GROSFIELD asked what the amendment did on Line 12 to the County Commissioners and SEN. TAYLOR stated it was eliminated.

SENATOR KEATING suggested that at some point this be refined so people could do this by initiative or the County Commissioners could by referendum refer a vote to the people. That way the County Commissioners can exercise their authority for an ordinance subject to a vote of the people. SEN. TAYLOR responded he had no problem with that as long as it was a 2/3 vote.

Motion/Vote: SEN. GROSFIELD moved that SB 345 DO PASS AS AMENDED. Motion carried 6-5 by Roll Call Vote with SENATORS MAHLUM, COCCHIARELLA, ROUSH, TAYLOR AND WILSON voting no.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 14; Comments : None.}

ADJOURNMENT

Adjournment: 5:50 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas41aad)